

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

980 County Road W, Space 1146,
Fremont, Nebraska;

5605 N. 168th Street, Omaha,
Nebraska,

Defendants.

Case No. 8:22CV240

**PINNACLE BANK'S ANSWER
TO AMENDED COMPLAINT
FOR FORFEITURE IN REM**

Claimant, Pinnacle Bank, for its answer to the Amended Complaint for Forfeiture In Rem filed herein (Doc. #15) admits, denies and states as follows:

NATURE OF ACTION

1. Pinnacle Bank admits the allegations contained in paragraph 1 of the Amended Complaint.

2. For its answer to paragraph 2 of the Amended Complaint, Pinnacle Bank states that it is a first priority lienholder of a valid existing, good faith, and legally recognized interest in the real property located in Saunders County, Nebraska, commonly known as 980 County Road W, Lot S1146, Fremont, Nebraska, with all its appurtenances, improvements, and attachments thereto (Am Compl. ¶ 2b) (the "Fremont Property"). Pinnacle Bank further states that it is a first priority lienholder of a valid existing, good faith, and legally recognized interest in the real property located in Douglas County, Nebraska, commonly known as 5605 N. 168th Street, Omaha, Nebraska, with all its appurtenances, improvements, and attachments thereto (Am Compl. ¶ 2c) (the "168th Street Property").

3. Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3 through 6 of the Amended Complaint and therefore denies the same.

JURISDICTION AND VENUE

4. Pinnacle Bank admits the allegations contained in paragraphs 7 and 8 of the Amended Complaint.

GROUND FOR FORFEITURE

5. Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9 through 10 of the Amended Complaint and therefore denies the same.

FACTS

6. Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 11 through 43 of the Amended Complaint and therefore denies the same.

7. Pinnacle Bank admits, in part, the allegations contained in paragraph 44, specifically that “[t]he remaining balance was paid from loan proceeds of Pinnacle Bank Loan Number 6518180068. The stated purpose of the loan is real estate investment. The loan was taken out on June 3, 2019, in the amount of \$376,000.00 and funded a \$321,134.53 wire to MWAZ, LLC DBA McLaren Scottsdale sent on October 23, 2019. The collateral on the loan is the property located at 980 County Road W, Space 1146, Fremont Nebraska.” Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 44 of the Amended Complaint and therefore denies the same.

8. Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 45 through 47 of the Amended Complaint and therefore denies the same.

9. Pinnacle Bank admits, in part, the allegations contained in paragraph 48, specifically that “[o]n December 16, 2020, COOK wired \$850,000.00 from his personal account at UMB Bank to 14334 Industrial Road, LLC’s account at Pinnacle Bank” and that “[o]n December 18, 2020, COOK wired \$762,228.75 from 14334 Industrial Road, LLC’s Pinnacle Bank account to Missouri River Title and Escrow for the purchase of the property located at 14334 Industrial Road, Omaha, Nebraska.” Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 48 of the Amended Complaint and therefore denies the same.

10. Pinnacle Bank admits the allegations contained in paragraph 49 of the Amended Complaint.

11. Pinnacle Bank is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 50 through 75 of the Amended Complaint and therefore denies the same.

GENERAL DENIAL

12. Pinnacle Bank denies each and every allegation of the Amended Complaint, save and except only those allegations expressly admitted to be true herein and those allegations that constitute admissions against the alleged interests of Plaintiff.

AFFIRMATIVE DEFENSES

1. Pinnacle Bank refers to and incorporates by this reference the Amended Verified Claim of Pinnacle Bank filed herein on August 22, 2022, at Doc. # 27.

2. Pinnacle Bank is the first priority lienholder of a valid existing, good faith, and legally recognizable security interest in the real property located in Saunders County, Nebraska, commonly known as 980 County Road W, Lot S1146, Fremont, Nebraska, with all its appurtenances, improvements, and attachments thereon referred to herein above as the Fremont Property.

3. Pinnacle Bank as lender made a line of credit loan to Brett A. Cook (“Cook”), as borrower, in the original principal amount of \$376,000.00 as evidenced by a Promissory Note dated June 3, 2019.

4. In connection with and in consideration for the loan Cook, trustee of his successors in trust under The Brett A. Cook Revocable Trust, dated August 10, 2017, as trustor executed for the benefit of Pinnacle Bank that certain Deed of Trust dated June 3, 2019 and recorded on June 3, 2019, in the Register of Deeds of Saunders County, Nebraska, Instrument No. 2019-06-010 thereby granting Pinnacle Bank a first priority security interest in the Fremont Property.

5. Pinnacle Bank is the first priority lienholder of a validly existing, good faith, and legally recognizable security interest in the real property located in Douglas County, Nebraska, commonly known as 5605 N. 168th Street, Omaha, Nebraska, with all its appurtenances, improvements, and attachments thereon referred to herein above as the 168th Street Property.

6. Pinnacle Bank as lender made a loan to 14334 Industrial Road, LLC, as evidenced by a Promissory Note dated October 29, 2021.

7. In connection with and in consideration for the loan, 14334 Industrial Road, LLC, as trustor, executed for the benefit of Pinnacle Bank, that certain Deed of Trust dated October 29, 2021, and recorded on October 29, 2021, in the Register of Deeds of Douglas County, Nebraska, as Instrument No. 20211142985, thereby granting Pinnacle Bank a first priority security interest on the 168th Street Property.

8. On April 29, 2022, 14334 Industrial Road, LLC, and Pinnacle Bank agreed to refinance the loan, and 14334 Industrial Road, LLC executed and delivered to Pinnacle Bank a Promissory Note dated April 29, 2022, in the original principal amount of \$478,571.98, which is secured by the October 29, 2021, Deed of Trust on the 168th Street Property.

9. Pinnacle Bank is an “innocent owner” as defined pursuant to 18 U.S.C. §983 for the reason that Pinnacle Bank did not know of the alleged conduct giving rise to this forfeiture action at the time Pinnacle Bank acquired its security interests in the Fremont Property and the 168th Street Property and was reasonably without cause to believe that said properties were subject to forfeiture.

WHEREFORE, Pinnacle Bank prays that this Court recognize Pinnacle Bank’s first priority lien interest in the Fremont Property and in the 168th Street Property as an “innocent owner” and enter an order and judgment that said properties not be forfeited to the United States and that said properties be released from the warrant for arrest in rem, entered herein, and for such other and further relief as the Court deems just and equitable in the premises.

DATED: September 6, 2022.

PINNACLE BANK, Claimant

By: /s/ Craig A. Knickrehm
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of September 2022, a copy of the above and foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification electronically of such to all CM/ECF participants.

/s/ Craig A. Knickrehm